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81-00057



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NOV 6 1980

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Schools - Ad Valorem Taxes - Elections

Only City Board of Education is authorized to call for election concerning passage of school district tax in district composed of city under control of City Board of Education.

Petition signed by 200 qualified electors of the county is necessary in order to call for an election concerning passage of school tax authorized by §269, Constitution 1901, and/or §1 of Amendment No. 3, Constitution 1901.

Dear Mr. Parker:

Your request for an opinion dated September 22, 1980, is as follows:

"Is it legal for a county Board of Education in the same county in which a separate City Board of Education exists to call for a vote on the three mill district school tax that affects the City Board of Education? Is it legal for the County Board of Education, without the consent of the City Board of Education, to call for a vote on the four mill county wide school tax."

I assume that the three mill district school tax to which you refer in Question No. 1 above is the tax authorized by §2 of Amendment No. 3 of the Constitution of Alabama of 1901. You seem to be asking whether a County Board of Education may call for a vote on a three mill district tax when the district referred to is the City of Eufaula. Your question is answered in the negative. Section 16-13-180, Code of Alabama 1975, provides the method by which elections on the tax authorized by Amendment No. 3 may be requested:

"Upon a petition signed by 200 or more qualified electors of any county to the county commission, said county commission shall order an election to be held at the time specified in said petition to determine whether or not a special tax shall be levied for public school purposes within said county; and, upon request of the county board of education to the county commission, said court shall order an election to be held at the time requested by the said board of education to determine whether or not a special tax shall be levied for public school purposes within any school tax district in the county under the control of such board; and, upon the request of any city board of education to the county commission, said court shall order an election to be held at the time requested by said board of education to determine whether or not a special tax shall be levied for public school purposes within said city."

The above section provides for the calling of elections for the levying of three kinds of three mill ad valorem taxes, viz: county wide, district under the control of the County Board of Education, and cities. Quarterly Report of the Attorney General Volume 3, page 77. It can be seen from reading the above quoted statute that only the City Board of Education may call for a vote on the three mill district school tax when the district referred to is composed of the city. It is clear that the city as a school district is not under the control of the County Board of Education but is instead under the control of the City Board of Education.

I assume that the four mill county wide school tax to which you refer in your second question is composed of the one mill tax authorized by §269 of the Constitution of Alabama 1901 and the three mill tax authorized by §1 of Amendment No. 3 of the Constitution of Alabama 1901. Your question is answered in the negative. The County Board of Education may not call for a vote on the county wide school taxes either with or without the consent of the City Board of Education. In the case of county wide tax elections, a petition signed by 200 qualified electors of the county is necessary before the County Commission may call an election. See §16-13-180 above, as to the three mill tax, and §16-13-160, as to the one mill tax.

Sincerely,

CHARLES A. GRADDICK
Attorney General
By-



RON BOWDEN
Assistant Attorney General

RB:jt